

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

1 THE CIRCLE, SUITE 2
SUSSEX COUNTY COURTHOUSE
GEORGETOWN, DE 19947

Zandra Sauers, RN
711 Phillips Hill Drive
Millsboro, DE 19966

Lisa Barchi, Esquire
Deputy Attorney General
820 N. French Street, 6th Floor
Wilmington, DE 19801

Re: ***Sauers v. State of Delaware et al.***
C.A. No. S09A-11-003 RFS

*Upon Appeal of a Decision of the Delaware Health and Social Services,
Division of Long Term Care Residents Protection. Decision Affirmed.*

Submitted: June 8, 2010
Decided: June 29, 2010

Dear Ms. Sauers and Ms. Barchi:

This is an appeal from a decision of Delaware Health and Social Services, Division of Long Term Care Residents Protection (“Division”). Appellant Zandra Sauers (“Sauers”), a licensed nurse, was found to have treated a patient in her care with neglect, as that term is defined pursuant to 16 *Del. C.* § 1131(9). For this reason, she was listed in the Adult Abuse Registry. Sauers has appealed the Division’s decision to this Court. As explained below, the Court finds that the administrative decision is both factually and

legally sound, and is therefore affirmed.

Facts

On December 22, 2008, a resident, Anthony Rotolo (“Resident”), in Harbor Health Care Nursing and Rehabilitation Center (“Harbor”) had not had a bowel movement in several days. Harbor had a protocol for treating residents with constipation. Sauers, who was the Resident’s assigned nurse for that day, was asked to implement the stage of the protocol where an enema was indicated. Sauers asked a nursing assistant, Karen Harris, to place the Resident in bed and place him on his left side for delivery of the enema. He was put in bed, but got out of the bed by the time Sauers entered the room. Sauers encouraged him to return to bed, but he refused. At the administrative hearing, Sauers testified that the Resident was “adamant” in his refusal to get back into bed. He put his feet on the floor and would not allow her to put him in bed.

Sauers went to get assistance from Harris. By the time they entered the room, the Resident was in his wheelchair and trying to go to the bathroom. Harris helped the Resident take down his pants because he said he needed to go to the bathroom. Despite the Resident’s clear desire to go to the bathroom without an enema, Sauers began her efforts to administer the enema. The Resident moved around the room, trying to elude her, but to no avail. The enema was administered, and the Resident clearly stated it hurt.

After Sauers left the room, the Resident sat down on the toilet and moved his bowels. Harris, who was still in the room with him, saw blood coming out. She went to get Sauers, who returned and saw the blood in the toilet. Valerie Cahill (“Cahill”), the nurse coming on duty, went to the room and saw blood dripping from the Resident’s rectum.

At the subsequent hearing, three witnesses testified that Sauers went to the nurses’ station and said that the Resident “fought like a bull” when she tried to give him the enema. Two witnesses testified that Sauers stated that she hoped she did not perforate the Resident’s bowel.

The Resident was taken to Beebe Hospital and examined by Scott Jensen, M.D. Dr. Jensen testified at the hearing that the presence of blood was probably due to the passage of the hard stool because the Resident was taking the blood thinner, Coumadin.

The Division Hearing Officer determined that the State established that Sauers’ actions demonstrated a lack of attention to the physical needs of the patient and therefore proved a finding of neglect pursuant to 16 *Del. C.* § 1131(9) (a). The Hearing Officer found that the State did not show a failure to carry out a prescribed treatment plan pursuant to 16 *Del. C.* § 1131(9)(c). Finally, the Hearing Officer reduced Sauers’ placement on the Adult Abuse Registry from 5 years to 18 months.

Standard of Review

On appeal of an administrative decision, such as the one at bar, this Court’s role is

to determine whether there are any errors of law and whether or not substantial evidence exists on the record to support the tribunal's findings of fact and conclusions of law.¹ Substantial evidence is such relevant evidence as a reasonable person might accept as adequate to support a conclusion.² This Court does not weigh the evidence, determine questions of credibility, or make its own factual findings.³

Issues on Appeal

Sauers makes four arguments on appeal. First, she asserts that the Division erred in the description of the incident in the charge letter dated November 23, 2009. Second, she argues that the Hearing Officer erred in holding that Sauers' administration of an enema over the toilet placed the Resident at risk for injury. Third, she argues that the Hearing Officer erred in holding that Sauers' administration of the enema over the toilet, as opposed to in the bed, was grounds for a finding of neglect and her placement of the Adult Abuse Registry. Fourth, she argues that the Hearing Officer erred in holding that Sauers neglected the Resident's safety needs.

Discussion

The charge letter. Notice of the charges against Sauers was sent to her in the form of a letter from the Division ("the charge letter"). A charge letter lists the date and

¹*Lewis v. New Castle County Board of Adjustment*, 601 A.2d 1048 (Del. Super. Ct. 1989).

²*Oceanport Indus. Inc. v. Wilmington Stevedores, Inc.* 636 A.2d 892 (1994).

³*Johnson v. Chrysler Corp.*, 213 A.2d 64 (Del. 1965).

time of the offense, as well as a description of the charged conduct and a description of the incident. In this case, the charge letter provided as follows:

The accused administered a fleet enema to a resident improperly, while he was resisting and after he asked her to stop. He then experienced rectal bleeding.

Saurers takes issue with the assertion that the enema was given improperly, that the Resident resisted or asked her to stop and argues that the rectal bleeding was not causally related to the enema.

The record shows that the purpose of the charge letter is to put the respondent on notice of the charged conduct. The letter provided a description of the incident adequate to put Sauers on notice of the charges and what preparations she needed to make for the hearing. In *Berchock v. Council on Real Estate Appraisers*,⁴ this Court addressed the requirements for notice in the context of an administrative hearing:

To be effective, the notice must be such that the individual to whom it is directed knows what professional violations are in issue. This does not mean that a complaint issued by an administrative board must satisfy the pleading rules of this Court. Nor does this mean that the complaint and the ultimate holding of the Board must mesh with precision. A complaint is sufficient of a reasonable person reading it knows what conduct and alleged professional responsibilities are at issue. Where this standard has been met due process is preserved since the party before the Board has an adequate opportunity to prepare a defense.

The description of the incident in the charge letter clearly gave Sauers notice of the charges she would be facing. A reasonable person would understand that the charges

⁴2001 WL 541026 (Del. Super.).

pertained to the administration of the enema to the Resident, who allegedly resisted and who experienced rectal bleeding following the enema. This is precisely the subject matter that was addressed at the hearing. While the State did not prove that the Resident asked her stop in the bathroom or that the enema caused the bleeding, these points do not impact on the sufficiency of the charge letter. The charge letter stated the State's case and the factors it intended to prove. Thus, Sauers was on notice, and due process was preserved.

Administration of the enema while standing over the toilet instead of in bed.

Sauers argues that it is improbable to perforate the rectum with a fleet enema inserted gently and pointed toward the navel. Sauers also argues that the toilet position is taught in medical facilities and presented in nursing textbooks. She also asserts that this position was appropriate for this Resident because he was resisting.

These arguments miss the mark. The record is uncontested that a resident at Harbor may not be forced to accept a procedure or treatment against his will. It is uncontested in this case that the Resident expressed his desire to go to the bathroom without an enema beforehand by saying "no" and that he resisted the administration of the enema through his physical actions. At least three witnesses stated that Sauers reported that the Resident "fought like a bull." Thus, Sauers' argument that the standing position was appropriate misses the overriding point that no position was appropriate because the Resident clearly showed in both words and conduct that he did not want an enema.

Sauers asks this Court to substitute its judgment that the standing toilet position

was appropriate under the conditions where the Resident had allegedly not had a bowel movement for several days. The Hearing Officer found that the use of the standing toilet position violated the Resident's safety needs, and that finding is supported by substantial evidence. The Resident was taking Coumadin, a blood thinner, which placed him at risk for bleeding, and Sauers acknowledged that he required extra care for this reason. She also testified that the Resident refused to lie on the bed to receive the enema in the usual position and that in such a situation a care giver should walk away and try again later. She did the opposite, forcing the Resident to receive the enema in a standing position that is not the typical position. This procedure was not mandated by the circumstances.

The Court will not substitute its judgment for the Hearing Officer's finding that Sauers unnecessarily risked injury to the Resident by administration of the enema in the standing toilet position. The Hearing Officer's finding is supported by the record evidence and will not be disturbed on appeal.

Grounds for a finding of neglect. Sauers makes a related claim that her administration of the enema in the standing position saved the Resident's life and does not constitute grounds for a finding of neglect. Pursuant to 16 *Del.C.* § 1131(9)(a):

"Neglect" shall mean:

- a. Lack of attention to physical needs of the patient or resident
including but not limited to toileting, bathing, meals, and safety.

The Hearing Officer found that Sauers ignored the Resident's safety by giving him an

enema to him in the standing position because there was a risk of bowel perforation due to the blood thinning medication. While the Resident's rectal bleeding was found by an emergency room physician to be the probable result of passing a hard bowel movement, the Hearing Officer found that fact to be irrelevant to the risk created by the giving of the enema to a standing patient who was taking a blood thinner. This finding is supported by substantial evidence on the record and will not be disturbed on appeal.

The basis for the Hearing Officer's finding. Sauers argues that two attempts were made to assist the Resident to lie in bed to receive the enema and that Sauers obtained help from Harris to prevent injury during administration of the standing enema. Again, this is a fact-based argument, and substantial evidence exists on the record to support the Hearing Officer's finding. The Hearing Officer did not find that the two prior attempts to persuade the Resident had anything to do with posing a risk of harm to the Resident. That risk occurred when Sauers forced the enema on the Resident in the standing position after he expressed his opposition to the procedure. The presence of Harris in the room did not ameliorate this risk. Sauers argues that she took every precaution to prevent injury during the procedure. The precaution she did not take was to forebear administering the enema at all. There was no emergency and Harbor's protocol required that the patient and family be consulted where care was refused.

Conclusion. The Court finds that the Hearing Officer's findings of fact are supported by the record and that there is no error of law. For these reasons, the decision

of the Hearing Officer that Sauers acted in a neglectful manner that posed a risk of injury against the Resident's safety is **AFFIRMED**. As a consequence, Sauers' placement on the Adult Abuse Registry for 18 months⁵ is also **AFFIRMED**.

IT IS SO ORDERED.

Richard F. Stokes

Original to Prothonotary

⁵The Hearing Officer carefully considered the factors relevant to Sauers' placement on the Registry. After balancing the factors specifically implicated in this case, the Hearing Officer reduced Sauers' original five-year listing on the Registry to 18 months.